



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA 95814-2922

May 2, 2006

Regulatory Branch (200000025)

Eric Mische
Freeport Regional Water Authority
2710 Gateway Oaks Drive
#320 South
Sacramento, California 95833

Dear Mr. Mische:

We are enclosing two draft copies of Department of the Army Permit 200000025 with this letter. Please read the terms and conditions of this permit carefully. To accept this permit, please complete the following:

- a. Sign and date both copies of the permit. You should include your printed name and title. Your signature will indicate acceptance of all permit conditions.
- b. Enclose a check or money order in the amount of \$100.00 made payable to FAO-USAED Sacramento.
- c. Return both copies of the signed permit to me.

After we receive all of the above items, we will sign and return one copy of the fully executed permit to you.

This letter contains permit for the Freeport Regional Water Project. If you object to this decision, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this you must submit a completed RFA form to the South Pacific Division Office at the following address:

Doug Pomeroy, Administrative Appeal Review Officer
Army Corps of Engineers, South Pacific Division
CESPD-PDS-O
333 Market Street, Room 923
San Francisco, California 94105-2195
Telephone: 415-977-8035 FAX: 415-977-8129

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the NAP. Should you decide to submit an RFA form, it must be received at the above address by July 1, 2006. It is not necessary to submit an RFA form to the Division Office if you do not object to the decision in this letter.

Please refer to identification number 200000025 in any correspondence concerning this project. If you have any questions, please contact Ms. Kathleen Dadey at our Sacramento Office, 1325 J Street, Room 1480, Sacramento, California 95814-2922, email kathleen.a.dadey@usace.army.mil, or telephone 916-557-7253. You may find additional information on our website: www.spk.usace.army.mil/regulatory.html.

Sincerely,

KAD
DADEY/ei
CESPK-CO-R

ORIGINAL SIGNED

[Signature]
CAVANAUGH
CESPK-CO-R

Thomas J. Cavanaugh
Acting Chief, Central
California/Nevada Section

Enclosure(s)

Copy furnished without enclosure(s):

Robin Cort, Parsons, 2121 North California Blvd. Suite 500, Walnut Creek, California 94596

Thomas Aiken, Bureau of Reclamation, U.S. Department of Interior, 7794 Folsom Dam Road, Folsom, California 95630-1799

Gregg Ellis, Jones and Stokes, 2600 V Street, Sacramento, California 95818

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Freeport Regional Water Authority		File Number: 200000025	Date: 5/2/2006
Attached is:		See Section below	
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
X	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/ceewo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the DISTRICT engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the DISTRICT engineer. Your objections must be received by the DISTRICT engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the DISTRICT engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the DISTRICT engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the DISTRICT engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the DIVISION (not district) engineer (address on reverse). This form must be received by the DIVISION engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the DIVISION (not district) engineer (address on reverse). This form must be received by the DIVISION (not district) engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the DIVISION (not district) engineer (address on reverse). This form must be received by the DIVISION engineer within 60 days of the date of this notice. Exception: JD appeals based on new information must be submitted to the DISTRICT engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
DISTRICT ENGINEER
Sacramento District, Corps of Engineers
Attn: Kathy Dady, Project Manager, Regulatory Branch
1325 J Street, Room 1480
Sacramento, CA 95814-2922 (916-557-57253
(Use this address for submittals to the DISTRICT ENGINEER)

If you only have questions regarding the appeal process you may also contact:
DIVISION ENGINEER
Army Engineer Division, South Pacific, CESPD-CM-O
Attn: Doug Pomeroy, Administrative Appeal Review Officer,
Army Corps of Engineers – CESPD-PDS-O, 333 Market Street,
Room 923, San Francisco, CA 94105-2195,
Telephone 415-977-8035, FAX 415-977-8129)
(Use this address for submittals to the DIVISION ENGINEER)

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

DEPARTMENT OF THE ARMY PERMIT

Permittee: Eric Mische
Freeport Regional Water Authority
2710 Gateway Oaks Drive
#320 South
Sacramento, California 95833

Permit Number: 200000025

Issuing Office: U.S. Army Engineer District, Sacramento
Corps of Engineers
1325 "J" Street
Sacramento, California 95814-2922

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below. A notice of appeal options is enclosed.

Project Description:

To construct an intake at the Sacramento River near Freeport (Section 11 Township 7 N, Range 4 E), a pipeline from the intake at the Sacramento River to the Folsom South Canal at Section 6, Township 7 N, Range 7 E, a pipeline from the terminus of the Folsom South Canal (Section 2, Township 5 N, Range 7 E) to the Mokelumne Aqueduct, a water treatment plant on parcel APN 066-0030-001, a pipeline extension from Gerber Road north to the water treatment plant, a water treatment facility at the Mokelumne Aqueduct, and associated ancillary facilities, such as pumping plants.

All work is to be completed in accordance with the attached plans.

Project Location:

As shown on the attached plans, the pipeline and associated facilities will be constructed in Sacramento and San Joaquin Counties.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on May 31, 2011. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted

activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. This DA permit does not authorize you to take listed species or designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (i.e., an ESA Section 10 permit(s), or a Biological Opinion(s) under ESA Section 7, with incidental take provisions with which you must comply). The attached Fish and Wildlife(USFWS) and National Marine Fisheries Service s (NMFS) Biological Opinions (USFWS s Number 1-1-04-F-0224 dated December 10, 2004 and December 27, 2004 NMFS Opinion) contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the incidental take specified in those Biological Opinions. Your authorization under this DA permit is conditional upon your compliance with all the mandatory terms and conditions associated with incidental take in the attached Biological Opinions. All mandatory terms and conditions of the Biological Opinions are incorporated by reference in this permit. Failure to comply with the mandatory terms and conditions of the Biological Opinions, where a take of a listed species occurs, would constitute an unauthorized take and non-compliance with your DA permit. The Fish and Wildlife Service and NOAA Fisheries are the appropriate authorities to determine compliance with the mandatory terms and conditions of their Biological Opinions and with the ESA. You must comply with all conditions of the Biological Opinions, including those ascribed to the Federal Lead Agency (i.e., the Bureau of Reclamation). Note that habitat conservation recommendations for Essential Fish Habitat are identical to Terms and Conditions 1a, 1b, 2d, 2e and 2f of the NMFS Biological Opinion, so no additional recommendations are required.

2. You must revise and refine the Conceptual Off-site Mitigation Plan for the Freeport Regional Water Project (Plan), dated April 24, 2006, in consultation with the Corps Regulatory Section, to identify, with specificity:

a. Mitigation site(s), including accurate and complete Title information;

b. A description of existing natural resources, including their locations and functions, present on the mitigation site(s);

- c. Locations of all proposed construction activities (e.g., wetland creation, restoration and enhancement);
- d. Construction activities, including, but not limited to:
 - * Timing, including approximate start and end dates
 - * Excavation design, including plan and section views, as appropriate
 - * Expected water ponding depths and durations
 - * Depth to subsurface impermeable layer (as appropriate)
 - * Soil treatments (as appropriate)
 - * Construction BMPs;
- e. Plant palettes and source(s) of material (note: to the extent practicable, all planted and seeded species should be native to the area);
- f. Expected functions of created/restored/enhanced aquatic functions;
- g. Success criteria and performance standards;
- h. Permitted and prohibited uses of the mitigation site(s); In general, examples of prohibited activities include, but are not limited to, construction of roads, utility lines, trails, or structures, storage of equipment, fuel or hazardous materials, grading (post-construction), discharge of dredged or fill material (post-construction), discing, pesticide use, burning, off-road vehicle use, trash or debris disposal, vandalism;
- i. Fencing and signage requirements;
- j. Timing (i.e., pre- during, and post-construction), frequency and location of aerial and other photographs of the mitigation area(s);
- k. Short-term and Interim monitoring requirements, including the content of monitoring reports (e.g., an outline or template);
- l. Long-Term Operations and Management Plan, describing all expected long-term activities, including monitoring requirements;
- m. Adaptive management plan, including potential remedial measures and triggers for undertaking such measures;
- n. A PAR analysis identifying the amount of the Endowment Fund (note that the Corps expects that a separate analysis and Endowment Fund may be necessary for each mitigation site);
- o. Identification of the mitigation area(s) management entity (subject to approval by the Corps);
- p. Identification of the holder of the Endowment Fund(s) (subject to approval by the Corps); and
- q. Identification of Conservation Easement or Fee-simple title holder(s) (subject to approval by the Corps)

The Plan should conform to the Format presented in the Sacramento District's Mitigation and Monitoring Proposal Guidelines, dated December 30, 2004

(http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/pdf/Mitigation_Monitoring_Guidelines.pdf).

The Corps Regulatory Section must approve the final revised and refined Mitigation Plan in writing to validate it.

3. To compensate for the loss of 6.623 acres of seasonal freshwater resources (including non-jurisdictional waters of the State), you will create or restore 13.237 acres of functionally similar aquatic resources at the chosen mitigation site(s). (As shown on Table 1. of the Conceptual Mitigation Plan)
4. To compensate for the loss of 1.328 acres of low-functioning mineral soil flat (wet meadow), you will create or restore 1.328 acres of higher functioning, but similar aquatic resources at the chosen mitigation site(s).
5. To compensate for the loss of 0.654 acres of perennial freshwater marsh, you will create or restore 1.308 acres of functionally similar aquatic resources at the chosen mitigation site(s). (As shown on Table 1. of the Conceptual Mitigation Plan)
6. To compensate for the loss of 0.275 acres of riparian aquatic resources, you will create or restore 0.55 acres of functionally similar riparian resources at the chosen mitigation site(s). (As shown on Table 1. of the Conceptual Mitigation Plan)
7. To compensate for the permanent and temporary loss of 2.537 acres of vernal pools and swales (including non-jurisdictional waters of the State), you will create or restore 5.074 acres of functionally similar vernal pools and swales at the chosen mitigation site(s), at a ratio of 2:1. (As shown on Table 1. of the Conceptual Mitigation Plan)
8. You must implement, in its entirety, the revised and refined Mitigation Plan, as described in Condition 2.
9. You must begin construction of the compensatory mitigation prescribed in the revised and refined Mitigation Plan described above in Condition 2. in advance of, or concurrently with the start of construction of the authorized work (with the exception of work in the Sacramento River and Dry, Coyote, Goose or Bear Creeks or in the Mokelumne River; please note Special Conditions 15 and 16 below).
10. You must notify the Corps Regulatory Section, in writing (via letter, facsimile or email) of the start and completion dates of mitigation construction activities no later than ten calendar dates after each date.
11. You must provide one complete set of as-built drawings of the completed compensatory mitigation work to the Corps Regulatory Section. The as-builts must indicate changes from the original plans in indelible red ink and an explanation for any such changes. You must provide as-built drawings to this office no later than 60 days after completion of construction of the compensatory mitigation area(s).
12. Prior to the start of construction of the authorized work, you must ensure that a permanent Conservation Easement(s) is recorded to ensure maintenance of the chosen mitigation site(s) as an aquatic resource preserve(s) and wildlife habitat area(s) in perpetuity. You must provide a copy of the proposed Conservation Easement to the Corps Regulatory Section for approval prior to recordation. You must provide a copy of the recorded easement to this office no later than 30 days following the recordation, and in all events, at least 10 days prior to the start of work authorized by this permit (with the exception of work in the Sacramento River, Dry, Coyote, Goose or Bear Creeks or in the Mokelumne River; please note Special Conditions 14 and 15 below).
13. Prior to the start of construction of the authorized work (with the exception of work in the Sacramento River, Dry, Coyote, Goose or Bear Creeks or in the Mokelumne River; please note Special Conditions 14 and 15 below), you must deposit monies into the Endowment Fund(s) for the compensatory mitigation site(s) equal to the amount specified by the PAR analysis(es) described in the revised and refined Mitigation Plan (see Condition 2. above).
14. Prior to the start of work in the Sacramento River, you must ensure the preservation, creation or restoration

of five acres of shallow water habitat for every acre lost. This can be accomplished by obtaining credits at an approved location such as Kimball Island Mitigation Bank. You must provide the Corps Regulatory Section evidence of this transfer of credits at least 10 days before work begins.

15. Prior to the start of work in Dry, Coyote, Goose or Bear Creeks or in the Mokelumne River, you must obtain 0.278 credits at an approved location, such as the Kimball Island Mitigation Bank. You must provide the Corps Regulatory Section evidence of this transfer of credits at least 10 days before work begins.

16. You must restore all aquatic resources temporarily impacted during construction as described in the Mitigation and Monitoring Plan for Temporary Impacts of the Freeport Regional Water Project , dated April 2006, attached to this authorization.

17. You must design and construct all crossings of waters of the United States to retain or restore, as appropriate, the natural substrate, and to accommodate all reasonably foreseeable wildlife passage and expected high flows. You must submit specific detailed plans to the Corps Regulatory Section for approval prior to implementation. These plans must include restoration or establishment of riparian vegetation at each open trench crossing location and extending a minimum of 100 feet from the centerline of the pipeline alignment in each direction.

18. For construction activities within the Klotz property (APN 123-0010-001), you must, to the extent practicable, restore the subsurface clay pan layer. You must submit monitoring reports, including descriptions and photographs of the area pre-, during and post-construction.

19. You must allow representatives from the Corps of Engineers to inspect the authorized activity and associated compensatory mitigation at any time necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

20. All terms and conditions of the Clean Water Act Section 401 Water Quality Certification for this project, dated April 26, 2006, are expressly incorporated as conditions of this authorization.

21. You understand that if future operations of the United States require the removal, relocation, or other alteration of the structure or work authorized in navigable waters of the U.S. herein, or if, in the opinion of the Secretary of the Army or his authorized representative, such structure or work will cause unreasonable obstruction to the free navigation of navigable waters (i.e., the Sacramento River), you will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structure, work, or obstruction(s) caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal projects.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant.

Circumstances that could require a reevaluation include, but are not limited to, the following:


- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170)

accomplish the corrective measures by contract or otherwise and bill you for the cost.

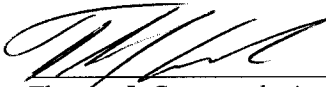
6. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.


Permittee
ERIC F. MISLHE
General Manager

May 2, 2006
Date

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.


Thomas J. Cavanaugh, Acting Chief,
Central California/Nevada Section
(For the District Engineer)

4 May 2006
Date

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

Transferee

Date